

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

In the Matter of the)	SUMMARY OF FACTS
Complaint Against)	AND
JIM CONNORS)	STATEMENT OF FINDINGS

Joe Guiberson (Complainant), a candidate for the Anaconda Chief of Law Enforcement, filed a complaint against Jim Connors (Respondent), his opponent and the incumbent. The complaint alleges that Jim Connors violated section 13-35-234, Montana Code Annotated (MCA), by making false statements and misrepresenting Complainant's position on public issues. The complaint alleges four separate violations of the statute.

Claim 1

Complainant alleges that Respondent placed an ad in the Anaconda Leader which misrepresented his position on "cutting" the police budget, after Complainant had dispersed a sworn affidavit indicating that he had no intention of "cutting" the police force.

Claim 2

Complainant alleges that Respondent told the Anaconda Tavern Association that "Guiberson will be hard on the tavern owners, if elected." Complainant maintains that he has not ever made such a statement.

Claim 3

Complainant alleges that Respondent made accusatory statements pertaining to Complainant's campaign in an ad which was placed by Respondent on October 9, 1996, urging voters to beware of dirty politics.

Claim 4

Complainant alleges that Respondent placed an ad in the Anaconda Leader on October 11, 1996, which misrepresents Complainant's intentions pertaining to the police budget.

SUMMARY OF FACTS

1. Joe Guiberson and Jim Connors are opponents for the elected position of Anaconda Chief of Law Enforcement. Complainant is currently a police captain on the Anaconda police force and Respondent is currently the incumbent chief.

Claim 1

2. Complainant states that rumors were circulating about his intentions pertaining to the budget and police staff if elected. The rumors indicated that if elected, Complainant intended to "cut" the police department. Therefore, Complainant dispersed a signed, sworn, affidavit which indicated that his intention was not to cut the police department budget or manpower.

3. Complainant signed the affidavit on September 16, 1996. Complainant personally delivered the affidavits to the police department staff on September 17, 1996.

4. Respondent placed an ad in the local paper, the Anaconda Leader on September 18, 1996 indicating that Complainant's plan was to "cut the police department and 911 staff, if elected . . . now that it is election time and the word is out he is trying to deny this."

5. The ad was received by the Anaconda Leader staff on Monday, September 16, 1996. Respondent routinely delivers ads to be placed in Wednesday's edition of the paper on Mondays. The Anaconda Leader deadline for submission of advertising for Wednesday's edition is noon on Tuesday. However, the staff has occasionally accepted submissions into the afternoon when possible. The staff indicated that Respondent always places his ads well in advance of the deadline.

6. Respondent maintains that Complainant had made numerous comments around the work area and the community pertaining to the budget and the size of the police force. Respondent states that "it was common knowledge" what Complainant's intentions were. Respondent states that he has not discussed the issues personally with Complainant. Respondent states that he was approached by at least half a dozen officers with concerns about their jobs based on what Complainant had indicated were his intentions. The union president spoke to Respondent regarding concern over potential layoffs if Complainant were elected.

7. Numerous employees of the police force indicated that it was their understanding that, if elected, Complainant would cut the budget, the 911 staff and the police force. An Anaconda citizen also heard Complainant state in a local restaurant that Anaconda was too small for an expensive 911 system.

8. One of the least senior officers was encouraged by Complainant to take a position in another city or county.

9. Complainant indicated that he forwarded some information which he heard from county officials regarding potential budget reductions to the union negotiating team. Complainant believes that his own position on the issue was misunderstood.

Claim 2

10. Respondent denies ever attending an Anaconda Tavern Association meeting, and also denies ever making the statement that "Guiberson will be hard on tavern owners, if elected."

Claim 3

11. Respondent placed an ad in the Anaconda Leader on October 9, 1996, which indicated

that Respondent would run a "clean, honest, campaign" and encouraging voters to "beware" of phone calls in which candidates bad mouth opponents.

12. Neither Complainant nor his campaign tactics were specifically mentioned in Respondent's ad.

13. Respondent stated that he placed the ad because last election many candidates encountered political dirty tricks, and it was his intention to express that he does not approve of such tactics. Respondent stated that he was not accusing any particular candidate of dirty campaigning. Rather, he was attempting to encourage everyone to run clean campaigns and to encourage voters to watch out for dirty politics.

Claim 4

14. On October 4, 1996, Complainant placed an ad in the Anaconda Leader stating that he has no intentions of cutting personnel, if elected. Complainant then stated that the budget grew and that "taxpayers cannot afford to continue paying increases at this rate . . . expenditures can be reduced without sacrifice of manpower or service."

15. Respondent placed an ad in the Anaconda Leader the following week on October 11, 1996, indicating that "to cut the police/911 budget as my opponent says he intends to do would do the following:" and then states seven items that would be eliminated if the budget were reduced. Among these items are police training and layoffs.

16. Complainant contends that even if he wanted to cut the police force, a grant which was recently awarded from the federal government precludes the layoff of police officers for the life of the grant.

17. Respondent stated that the grant has not been officially received yet, and further, stated that layoffs could be accomplished, although the grant would be lost if the department laid off officers.

STATEMENT OF FINDINGS

Section 13-35-234, MCA, provides:

Political criminal libel--misrepresenting voting records. (1) It is unlawful for any person to make or publish any false statement or charge reflecting on any candidate's character or morality or to knowingly misrepresent the voting record or position on public issues of any candidate. A person making such a statement or representation with knowledge of its falsity or with a reckless disregard as to whether it is true or not is guilty of a misdemeanor.

(2) In addition to the misdemeanor penalty of subsection (1), a successful candidate who is adjudicated guilty of violating this section may be removed from office as provided in 13-35-106 and 13-35-107.

In order to establish a violation of the statute, one of the four following elements must be proven: a false statement or charge reflecting on a candidate's character was made; or a false statement or charge reflecting on a candidate's morality was made; or a misrepresentation of a candidate's voting record was made; or a misrepresentation of a candidate's position on a public issue was made. Of course, even if one of the above items can be proven, in order to prevail, it must be proven that the requisite mental state existed. Thus, it must be proven that the false statement, charge, or misrepresentation was made "knowingly" or with "reckless disregard" as to whether or not it was true.

Claim 1

Based on the allegation in the complaint and the facts disclosed in the investigation, it is my conclusion that no violation took place. Complainant alleges that Respondent published an ad

misrepresenting his position on a public issue. The ad was placed prior to Complainant issuing an affidavit explaining his official position on the police department budget and manpower. The ad was published on September 18, 1996, however, the ad was submitted for publication on September 16, 1996. The affidavit was signed by Complainant on September 16, 1996 and dispersed on September 17, 1996.

Respondent had reason to believe that Complainant's position regarding the police department was to make budget cutbacks if elected. The facts indicate that these discussions had begun prior to the primary and continued through the date of the filing of the complaint. Numerous police department employees indicated that Complainant had made comments which they understood would mean layoffs and budget reductions if Complainant was elected. Some newer officers were encouraged by Complainant to take other positions if offered. Respondent had discussions with many employees about this issue. It was reasonable for Respondent to believe that Complainant intended to cut the budget. Complainant maintains that this is not true and Respondent misrepresented his position on the police department budget, a public issue. However, even if this were true, Respondent did not possess the requisite mental state to prove a violation of the statute. Respondent reasonably relied on information which was widely circulated within the work environment. Respondent did not publish the statement with reckless disregard.

While Complainant may feel that his position was misunderstood and was not portrayed in a manner which suits Complainant, no violation occurred.

Claim 2

Complainant maintains that the statement "Guiberson will be hard on the tavern owners, if elected," violates the criminal libel statute. I find that no violation took place. First, no evidence

indicating that this statement was made has been provided. Second, assuming that the statement was made, no violation occurs. As stated previously, a false statement or misrepresentation regarding a public issue, a candidate's morality or character, or a candidate's position on a public issue must be made. In this instance, the alleged statement does not include any of those elements. The comment does not pertain to Complainant's morality, character, voting record, nor does it rise to the level of a public issue. While, if stated, the statement may have been unfair to Complainant, it was not a violation of the law.

Claim 3

The facts and evidence do not indicate that the ad which was placed by Respondent pertaining to clean campaigns was directed at Complainant. Complainant was not specifically mentioned, nor was there any indication that the ad was directed at any particular individual. Respondent stated that the ad was placed to indicate his intentions to run a clean campaign and to warn voters about dirty politics.

Claim 4

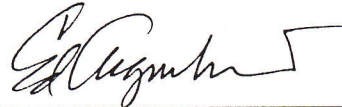
The ad which was placed by Respondent on October 11, 1996, followed an ad which was placed by Complainant on October 4, 1996. Complainant's ad discussed the increase in budget and stated that "taxpayers cannot afford to continue paying increases at this rate." Complainant brought the issue of budget to the public's attention. Respondent seized this opportunity to state his opinion about the effect those budget cutbacks would have on the police department. Clearly, Complainant did not anticipate Respondent's reaction to Complainant's comments about the budget. However, Respondent did not violate the criminal libel statute by responding with his opinion on the possible effect of decreased funding on the current police department.

It is typical for candidates to disagree with their opponents. It is also commonplace for candidates to insert their own opinions on the possible effects of certain actions or inactions which may be contemplated by their opponents. While at times this does not always seem fair to one side or the other, unfair statements do not rise to the level of a political criminal libel violation. No violation occurred.

Conclusion

Based on the preceding facts and findings, there is insufficient evidence to conclude that Jim Connors violated section 13-35-234, MCA.

DATED this ²⁸28 day of October, 1996.



Ed Argenbright, Ed. D.
Commissioner of Political Practices